

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES PHILIP DOUGLAS,

Petitioner,

v.

ROBERT MASKO,

Respondent.

Case No. C09-5439RJB

ORDER DENYING CERTIFICATE
OF APPEALABILITY

This matter comes before the court on review of the file. In the event that petitioner files a Notice of Appeal, the court must consider whether to grant or deny the petitioner a Certificate of Appealability. *See* 28 U.S.C. 2253(c)(3). The court has reviewed the record herein.

On August 16, 2010, U.S. Magistrate Judge Karen L. Strombom, issued a Report and Recommendation. Dkt. 39. On November 8, 2010, the court adopted the Report and Recommendation and dismissed the petition for writ of habeas corpus. Dkt. 58.

The district court should grant an application for a Certificate of Appealability only if the petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner must make a showing that reasonable jurists could debate whether, or agree that, the petition should have been resolved in a different manner or that the issues presented were adequate to deserve

1 encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (quoting
2 *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). When the court denies a claim on procedural
3 grounds, the petitioner must show that jurists of reason would find it debatable whether the petition
4 states a valid claim of the denial of a constitutional right and that jurists of reason would find it
5 debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 120
6 S.Ct. at 1604.

7 As discussed in the Report and Recommendation, petitioner has not met the standard for
8 obtaining a Certificate of Appealability. Dkt. 39, at 14. There is nothing in the record that would
9 support a conclusion that jurists of reason would find it debatable whether the petition states a valid
10 claim of the denial of a constitutional right and that jurists of reason would find it debatable whether
11 this court was correct in its procedural ruling. The Certificate of Appealability should be denied.

12 Accordingly, a Certificate of Appealability is **DENIED**.

13 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to
14 any party appearing *pro se* at said party's last known address.

15 DATED this 1st day of December, 2010.

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18 Robert J. Bryan
United States District Judge